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Federal Housing Finance Board

1777 F Street, N.W., Washington, D.C. 20006
 Telephone: (202) 408-2500 Facsimile: (202) 408-1435

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FHLB-ATLANTA

August 7, 1995

MEMORANDUM

TO: Tom Sheehan
 Acting Director
 Office of Policy and Financial Reporting

THROUGH: Paul J. Drolet
 General Counsel

FROM: Deborah Silberman
 Deputy General Counsel

SUBJECT: Transfer of Membership of Household Bank, F.S.B. (Household) and Sale of Advances From Federal Home Loan Bank (FHLBank) of San Francisco to FHLBank of Chicago

ISSUES: Whether Finance Board approval is required for Household's transfer of membership from the FHLBank of San Francisco to the FHLBank of Chicago.

Whether Federal Housing Finance Board (Finance Board) approval is required on the joint application of the FHLBanks of San Francisco and Chicago for the sale of outstanding advances made by the FHLBank of San Francisco to Household, and the purchase of those advances by the FHLBank of Chicago.

CONCLUSIONS: No. The Bank Act and Finance Board regulations do not provide explicitly for Finance Board involvement in transfers of membership, so long as the FHLBanks involved have reached agreement on a method of orderly transfer (which, in this case, they have). Further, since Household is a federally-chartered savings bank, membership in a FHLBank is mandatory; and, pursuant to Finance Board regulation, no application is required to be filed. Therefore, no other Finance Board action is required.

Yes. Pursuant to section 10(d) of the Federal Home Loan Bank Act (Bank Act), sales of advances from one FHLBank to another are subject to the approval of the Finance Board.

DISCUSSION AND ANALYSIS

1. Background

By letter dated July 14, 1995, the FHLBanks of Chicago and San Francisco jointly requested approval of the Finance Board for the sale of certain outstanding advances made by the FHLBank of San Francisco to Household, and the purchase of those advances by the FHLBank of Chicago. The sale and purchase of advances is necessitated by Household's relocation of its principal place of business from Newport Beach, California to Prospect Heights, Illinois. Also necessitated by that relocation is a transfer of FHLBank membership by Household.

2. Transfer of Membership

Household, a federally-chartered savings bank, was a member of the FHLBank of San Francisco; however, as a result of the relocation of its principal place of business, Household may not maintain membership in the FHLBank of San Francisco, but may only be a member of the FHLBank of Chicago, see 12 U.S.C. § 1424(b) and 12 C.F.R. § 933.5(a) (an institution eligible to become a member of a FHLBank under the Bank Act and the Finance Board's regulations may become a member only of the FHLBank of the district in which the institution's principal place of business is located).

Section 5(f) of the Home Owners' Loan Act of 1933 (12 U.S.C. § 1464(f)) (HOLA) provides that federal savings associations ... shall become automatically a member of the Federal home loan bank of the district in which it is located..." and that they must qualify for membership in the manner provided in the Bank Act. Section 933.2(d) of the Finance Board's regulations provides for automatic approval of membership in the FHLBank district in which an institution's principal place of business is located for any institution required by law to become a member of a FHLBank. 12 C.F.R. § 933.2(d). No application for membership is required to be submitted in that circumstance, and the institution automatically becomes a member of the appropriate FHLBank upon the purchase of stock in that FHLBank. Id.

Section 6(h) of the Bank Act, and section 933.17(a) of the Finance Board's regulations allow an institution to withdraw from membership in one FHLBank and acquire membership in another where that withdrawal is a consequence of a transfer of membership on a non-interrupted basis between FHLBanks. Section 933.5(d) of the Finance Board's regulations provides that no transfer of membership from one FHLBank to another shall take effect until the FHLBanks involved reach agreement on a method of orderly transfer. 12 C.F.R. § 933.5(d)(1). In the event the FHLBanks involved fail to agree on a method of

orderly transfer, the Finance Board would be required to determine the conditions under which the transfer would take place. Id., § 933.5(d)(2). Section 933.5(e) of the Finance Board's regulations provides further that transfers of membership made pursuant to those regulations shall be effective for all purposes, except for the provisions on termination of membership in section 6 of the Bank Act, 12 U.S.C. § 1426, or sections 933.13, 933.14, 933.15 and the restrictions on reacquiring FHLBank membership in section 933.17 of the Finance Board's regulations.

In the instant case, Household is required by HOLA to qualify under the Bank Act for membership in a FHLBank, and is authorized by HOLA and Finance Board regulation to become an automatic member of the FHLBank of Chicago without the filing of an application. The FHLBanks of San Francisco and Chicago have agreed upon a method of orderly transfer, and in fact have applied jointly for approval of the sale and purchase of Household's advances. Therefore, no other Finance Board determination or action is required with respect to Household's transfer of membership from the FHLBank of San Francisco to the FHLBank of Chicago, and the transfer may take effect and be effective for all purposes except those set forth in section 933.5(e) of the Finance Board's regulations.

3. Sale and Purchase of Advances

Pursuant to section 10(d) of the Bank Act, sales of advances from one FHLBank to another are subject to the approval of the Finance Board. Neither the Bank Act nor the Finance Board's regulations establish procedures for or standards governing Finance Board review of applications for sales of advances. Therefore, the Finance Board may consider whatever factors it believes to be relevant in evaluating an application for sale of advances, and may decide either to approve or deny such application, so long as its decision is in accordance with its overall duties to ensure that the FHLBanks operate in a financially safe and sound manner, and so long as its actions are not arbitrary and capricious.

1. 12 U.S.C. § 1464(f).

2. Id. 12 C.F.R. § 933.2(d).

3. It may be instructive to note that, pursuant to 12 C.F.R. § 935.16, a FHLBank may allow any other FHLBank to purchase a participation interest in any advance, and any other FHLBank may accept a participation interest therein, together with an appropriate assignment of security therefor, subject only to the approval of the boards of directors of the relevant Banks.

In this case, the FHLBank of Chicago has agreed with the FHLBank of San Francisco to purchase all of Household's outstanding advances with servicing released at a mutually agreed upon price, determined on "an equal sharing of the post-REFCO spread." See Letter from Charles A. Huston, FHLBank of Chicago, and Patrick J. Conway, FHLBank of San Francisco, to Rita I. Fair, dated July 14, 1995. The FHLBanks also have supplied more specific information about Household's outstanding advances and the terms of the transfer agreement. Id.

CONCLUSION

The Office of Policy and Financial Reporting has recommended approval of the application for the transfer of advances, and the Office of General Counsel has no legal objection to the recommendation.